

STATE OF WISCONSIN
TAX APPEALS COMMISSION

FILED
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Wisconsin Tax Appeals Commission
Drew Fox - Clerk

LANCE WALTER HERNKIND, JR.,

DOCKET NO. 25-I-058

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

RULING & ORDER

KENNETH P. ADLER, COMMISSIONER:

This case comes before the Commission for decision on Respondent's Motion for Summary Judgment. Petitioner, Lance Walter Hernkind, Jr. (Petitioner), appears *pro se*. The Respondent, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Nicole I. Pellerin.

ISSUES

The issues for determination are whether (1) Petitioner was required to file a 2022 Wisconsin income tax return based upon his residency and gross income and (2) the Department properly assessed an income tax liability when Petitioner failed to file a 2022 Wisconsin income tax return.

FACTS

1. The Department regularly maintains accounts for taxpayers in the ordinary course of its business in a computer system called "WINPAS." Documents that are

created, processed, and received relative to taxpayer accounts are maintained in WINPAS. Paper documents are scanned and entered into the system; emails and facsimile transmissions are saved to the system; electronically filed tax returns transmitted to the system by tax return software and copies of documents created by the system by Department employees are maintained in the system. All these records are made at or near the time of the event, either electronically, or by Department employees who have a business duty to make such records and who do so based upon personal knowledge or from information transmitted by a Department employee with personal knowledge. (Affidavit of Alexander Hans, ("Hans Aff."), ¶ 2.)

2. According to records received by the Department from employers, payers, and the Internal Revenue Service, during the 2020 tax year, Lance Walter Hernkind, Jr. received (1) a total of \$84,530.02 of wage income from three different employers (reflected on three Forms W-2 issued during to Petitioner), (2) \$45.00 of interest income (reflected on one form 1099-Int issued to Petitioner), (3) \$200.00 of dividend income (reflected on one Form 1099-Div issued to Petitioner and (4) \$2,960.00 of unemployment compensation (reflected on one Form 1099-G issued to Petitioner). Petitioner's address was reported as W7618 County Road CM, Portage, Wisconsin. (Hans Aff., ¶¶ 4,5.)

3. According to records received by the Department, during the 2022 tax year, Petitioner suffered a loss of \$7,074, (reflected on one Form K-1 issued to Petitioner), but it is not clear from those records, alone, if the loss is realizable. (Hans Aff., ¶ 6.)

4. Petitioner's 2022 Wisconsin income tax return was due on April 18, 2023. According to the records in WINPAS, Petitioner did not request an extension of the deadline to file his 2022 Wisconsin income tax return. (Hans Aff., ¶¶ 7, 8.)

5. On or about August 21, 2024, the Department mailed Petitioner a letter regarding his apparent failure to file his 2022 income tax return and providing instructions on how to file that return. (Hans Aff., ¶ 9, Dept. Ex. A.)

6. On or about September 7, 2024, Petitioner mailed a letter to the Department, enclosing a copy of the Department's August 21, 2024, letter, with a handwritten "non-negotiable" written across the letter. (Hans Aff., ¶ 10, Dept. Ex. B.)

7. On or about November 1, 2024, the Department mailed a Notice of Estimated Tax Amount Due - Individual Income Tax to Petitioner. The Notice explained it was being sent as the Department had not received Petitioner's 2022 individual income tax return and had therefore estimated his income and calculated the estimated tax amount owed. The Notice also gave Petitioner three options: (1) file his tax return which might change or cancel the amount owed, (2) file an appeal with the Department within 60 days or (3) send a copy of his tax return if already filed. (Hans Aff., ¶ 11, Dept. Ex. C.)

8. On or about November 9, 2024, Petitioner returned the Department's Notice of Estimated Tax Amount Due - Individual Income Tax via mail. Some of the handwritten comments were "I don't accept solicitations, No Contact, I don't adopt any foreign citizenship or character, I have no taxable income." (Hans Aff., ¶ 12, Dept. Ex. D.)

9. On or about November 18, 2024, the Department's Resolution Unit mailed a letter to Petitioner, confirming receipt of his letter and stating it was treating his

letter of objection as an appeal and had forwarded his file to Alexander Hans for review. (Hans Aff., ¶ 13, Dept. Ex. E.)

10. On or about December 13, 2024, Alexander Hans mailed a letter to Petitioner requesting some additional information with the possibility of resolving the matter. The letter also provided deadlines for (1) filing the 2022 Wisconsin income tax return or (2) requesting an extension. (Hans Aff., ¶ 14, Dept. Ex. F.)

11. On or about January 23, 2025, Petitioner mailed a 4-page letter to the Department. The letter did not provide the information requested by the Department to assist in determining Petitioner's responsibility to pay 2022 Wisconsin income tax. The letter instead provided many terms identified as definitions and statements, essentially asserting Petitioner did not owe any 2022 Wisconsin income tax and enclosed correspondence from 2021 claiming to confirm he had "revoke[d] my election to pay federal income taxes as of December 28, 2021." (Hans Aff., ¶ 15, Dept. Ex. G.)

12. On or about February 13, 2025, Hans mailed a letter to Petitioner stating the Department had not received his 2022 Wisconsin income tax return and had denied his request that he not be required to pay any 2022 state income tax. The letter provided instructions for filing an appeal to the Tax Appeals Commission if Petitioner disagreed with the Department's decision. (Hans Aff., ¶ 16, Dept. Ex. H.)

13. On or about March 13, 2025, Petitioner sent a letter to the Department repeating the same information presented in his January 23, 2025, letter. (Hans Aff., ¶ 17, Dept. Ex. I.)

14. On or about March 19, 2025, Hans mailed letter to Petitioner stating the information presented by Petitioner had not changed the Department's position. (Hans Aff., ¶ 18, Dept. Ex. J.)

15. On March 26, 2025, Petitioner submitted 44 pages to the Commission which were considered a Petition for Review, docketed and assigned appeal number 25-I-058. (Commission file.)

STANDARD OF REVIEW

Summary Judgment

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.¹ The party moving for summary judgment has the burden to establish the absence of a genuine issue as to any material fact.² Petitioner has provided no information to rebut the Department's Affidavits and Exhibits. Therefore, there is no genuine issue as to any material fact, and the case is appropriate for summary judgment.

Burden of Proof and Presumption of Correctness

Determinations the Department makes are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred.³

¹ *Maynard v. Port Publications, Inc*, 98 Wis. 2d 555, 558, 297 N.W.2d 500 (1980) citing Wis. Stat. § 802.08(2).

² *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980).

³ *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

APPLICABLE LAW

In this case, Petitioner repeatedly declined to file a 2022 Wisconsin income tax return. As detailed in the statutory sections below, when an individual fails to file a return, the Department is required to assess the tax liability based upon its best judgment.

Wis. Stat. § 71.02(1): IMPOSITION OF TAX. (1) For the purpose of raising revenue . . . there shall be assessed, levied, collected and paid a tax on all net incomes of individuals and fiduciaries . . . by every natural person residing within the state”

Wis. Stat. § 71.03(1): DEFINITION. In this section, “gross income” means all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes. “Gross income” includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items; gross income derived from business; . . . interest; . . . dividends; . . . distributive shares of limited liability company gross income except distributive shares of limited liability company gross income except distributive shares of the income of limited liability companies treated as corporations under s. 71.22(1k);

Wis. Stat. § 71.03(2)(a)1: (2) PERSONS REQUIRED TO FILE: OTHER REQUIREMENTS. The following shall report in accordance with this section:

(a) *Natural persons.* Except as provided in sub. (6)(b):

1. Every individual domiciled in this state during the entire taxable year who has a gross income at or above a threshold amount which shall be determined annually by the department of revenue

Wis. Stat. § 71.74(3): DEFAULT ASSESSMENT. Any person required to file an income or franchise tax return, who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

Wis. Stat. § 71.80(1): DEPARTMENT DUTIES AND POWERS.

(a) The department shall assess incomes as provided in this chapter and in performance of such duty the department shall possess all powers now or hereafter granted by law to the department in the assessment of personal property and also the power to estimate incomes.

ANALYSIS

The Department asserts Petitioner, based upon his Wisconsin residency and gross income in excess of \$12,490, was required by statute to file a 2022 Wisconsin income tax return and repeatedly declined to do so.⁴ Therefore, the Department made its determination as to Petitioner's estimated tax liability utilizing information reported by employers, payors, and the Internal Revenue Service.⁵ ⁶ The Department's Motion for Summary Judgment, requesting the Commission uphold the Department's action on Petitioner's Petition for Redetermination as to Petitioner's tax liability, explains Petitioner's refusal to file an income tax return is based upon his "common – and routinely rejected – tax protestor arguments."⁷

Petitioner presents many statements and arguments, none of which are found to rebut the presumption of correctness of the Department's determination. First, Petitioner has not presented any facts to rebut the Department's income information which it utilized to establish his estimated tax liability. Second, Petitioner has failed to file a 2022 income tax return with which he could clarify his income if he disagreed with

⁴ Department's Brief in Support of its Motion for Summary Judgment, p. 4. Wis. Stat. § 71.03(2)(a)1.

⁵ However, the Department does not know if Petitioner received income from any other source during 2022 because it relies upon taxpayers to report all income and realizable losses on income tax returns (Hans Aff., ¶¶ 4,5)

⁶ Department's Brief in Support of its Motion for Summary Judgment, p. 3

⁷ Department's Brief in Support of its Motion for Summary Judgment, p. 1, citing Internal Revenue Service, The Truth About Frivolous Tax Arguments Introduction, <https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction> (March 2022).

the income the Department attributed to him for 2022. Third, it is not clear how Petitioner's "revocation to pay federal income taxes" is applicable to state tax filing requirements. Finally, his blanket assertion he does not receive federal income or Wisconsin wages does not rebut the specific income information reported by his employers, nor overcome the statutory requirement that such gross income must be utilized in determining his tax liability.

CONCLUSIONS OF LAW

1. Petitioner was required to submit a 2022 Wisconsin income tax return based upon his gross income and Wisconsin residency, pursuant to Wis. Stat. § 71.03(2)(a).
2. The Department properly assessed an income tax liability pursuant to Wis. Stat. § 71.74(3).

ORDER

The Department's Motion for Summary Judgment is granted and its action on Petitioner's Petition for Redetermination and 2022 tax assessment is upheld.

Dated at Madison, Wisconsin, this 12th day of January, 2026.

WISCONSIN TAX APPEALS COMMISSION


Elizabeth Kessler, Chair


Jessica Roulette, Commissioner


Kenneth Adler, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
101 E Wilson St, 5th Floor
Madison, Wisconsin 53703

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.